

Message Text

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MONTREAL/ICAO, LONDON/IMCO, ROME/FAO

FOLLOWING REPEAT USUN 2175 SENT ACTION SECSTATE 08 JUL 77

QUOTE UNCLAS 2175

DEPT PASS ALL DIPLOMATIC POSTS

FROM US DEL LOS

E.O. 11652: N/A
TAGS: PLOS
SUBJ: WEEKLY SUMMARY LOS CONFERENCE WEEK OF JUNE 27 -
JULY 1

1. SUMMARY. THE MAJOR EVENT OF THE WEEK WAS AGREEMENT ON
PREPARATION OF A CONSOLIDATED TEXT BY THE PRESIDENT OF THE
CONFERENCE AND THE COMMITTEE CHAIRMEN WHICH WILL PROBABLY
BE ISSUED DURING THE LAST WEEK OF THE SESSION. THAT TEXT,
ALBEIT NOT NEGOTIATED, WILL IN FACT REPRESENT A
FURTHER STAGE IN THE CONFERENCE WORK AND WILL BE
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VIEWED BY MANY AS THE YARDSTICK BY WHICH THIS SESSION AND
PROSPECTS FOR COMPLETION OF SUBSTANTIVE NEGOTIATION OF A
TREATY AT A FURTHER SESSION ARE ASSURED. END SUMMARY.

2. GENERAL COMMITTEE AND PLENARY

A. THE GENERAL COMMITTEE AND LATER FULL PLENARY DE-
BATED THE WORK PLAN FOR THE REMAINDER OF THE LOS CONFERENCE,
WHICH IS SCHEDULED TO END JULY 15. PRESIDENT AMERASINGHE
(SRI LANKA) PROPOSED TO LEAD THE EFFORT TO PREPARE AN IN-

FORMAL COMPOSITE NEGOTIATING TEXT (ICNT) IN COOPERATION WITH THE THREE COMMITTEE CHAIRMEN. THE TEXT WOULD PRESUMABLY BE CIRCULATED PRIOR TO THE END OF THIS SESSION OF THE CONFERENCE. THE LAST DAY OR TWO OF THE SESSION WOULD DEAL WITH ARRANGEMENTS FOR FUTURE WORK.

B. TO MEET CONCERNS THAT THE NEW TEXT WOULD BE DIFFICULT TO CHANGE, AMERASINGHE NOTED THAT THE ICNT "WILL CERTAINLY NOT HAVE THE CHARACTER AND STATUS OF THE TEXT WHICH WAS PREPARED BY THE INTERNATIONAL LAW COMMISSION AND PRESENTED TO THE GENEVA CONFERENCE OF 1958. IT WOULD NOT HAVE THE STATUS OF THE BASIC PROPOSAL THAT WOULD STAND UNLESS REJECTED BY THE REQUISITE MAJORITY". AMERASINGHE COMPARED THE PLANNED ICNT TO PREVIOUS INFORMAL SINGLE NEGOTIATING TEXT AND THE REVISED SINGLE NEGOTIATING TEXT WHICH SERVED AS PROCEDURAL DEVICES TO FOCUS DISCUSSION WITHOUT AFFECTING THE RIGHT OF ANY DELEGATION TO SUGGEST REVISIONS.

C. THE PRESIDENT'S PERSONAL DISCRETION IN DRAFTING THE ICNT CAME UP FOR CONSIDERABLE DISCUSSION WITHOUT A CLEAR UNDERSTANDING EMERGING. SOME DELEGATES ARGUED FOR RECOGNIZING AMERASINGHE AS "PRIMUS INTER PARES" IN HIS UNCLASSIFIED

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RELATIONSHIP WITH THE COMMITTEE CHAIRMEN. OTHERS SAID THAT THE VIEWS OF THE COMMITTEE CHAIRMEN SHOULD PREVAIL OVER THE PRESIDENT'S. AMERASINGHE, WHILE ASSURING THE CONFERENCE THAT HE DID NOT SEEK AN "IMPERIAL PRESIDENCY" SAID THAT HE WAS CONFIDENT ABOUT DEVELOPING A GOOD WORKING RELATIONSHIP WITH THE COMMITTEE CHAIRMEN.

D. THUS, AMERASINGHE'S ORIGINAL PLAN OF PREPARING THE ICNT BY THE END OF THE 6TH WEEK HAS BEEN DELAYED, AND IT REMAINS TO BE SEEN WHETHER THE TEXT WILL BE AVAILABLE IN TIME TO ALLOW ANY DISCUSSION AT THIS SESSION.

3. COMMITTEE I

A. ONLY TWO DAYS OF MEETINGS WERE HELD, AS THE BALANCE OF THE WEEK WAS TAKEN UP BY G-77 CAUCUSSES AND GENERAL COMMITTEE MEETINGS. COMMITTEE I COMPLETED DISCUSSION OF DRAFT TEXTS DEALING WITH THE ENTERPRISE AND VARIOUS SPECIALIZED COMMISSIONS (TECHNICAL, ECONOMIC, RULES AND REGULATIONS). ON THE ENTERPRISE, KUWAIT, USSR AND SEVERAL OTHERS URGED THAT SEABED MINING COUNTRIES BEAR THE MAJOR FINANCING BURDEN FOR START-UP COSTS OF THE ENTERPRISE. THE US, SUPPORTED BY UK, FRG AND NETHERLANDS, AMONG OTHERS, ARGUED THE CAUSE FOR PROPORTIONAL PAYMENTS BY ALL STATES ACCORDING TO THE UN SCALE OF ASSESSMENTS. SINCE THE ENTERPRISE IS CONCEIVED OF AS A MINING VENTURE OPERATING FOR THE BENEFIT OF COUNTRIES WHO MINE-ON

THEIR OWN, ITS INITIAL COSTS OUGHT TO BE AN INTERNATIONALLY SHARED RESPONSIBILITY.

B. COMMITTEE I SPENT A FULL DAY DISCUSSING DISPUTE SETTLEMENT PROCEDURES AS THEY WOULD APPLY TO THE SEABED REGIME. THERE WAS GENERAL AGREEMENT THAT THE LOS TRIBUNAL SHOULD CONTAIN A SPECIAL DEEP SEABED CHAMBER. BUT THERE REMAINS DISAGREEMENT ON HOW THE MEMBERSHIP OF THE CHAMBER SHOULD BE SELECTED FROM AMONG THE MEMBERS OF THE TRIBUNAL, UNCLASSIFIED

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WHETHER BY TRIBUNAL MEMBERS THEMSELVES OR BY THE COUNCIL AND ASSEMBLY OF THE INTERNATIONAL SEABED AUTHORITY.

C. COMMITTEE I ADDRESSED THE ISSUE OF THE RELATIONSHIP OF PARTS I AND IV. CONSIDERABLE SUPPORT WAS GIVEN TO AUSTRALIA'S PROPOSED OUTLINE OF COORDINATING THE TEXTS, CONSISTING PRIMARILY OF TREATING ALL JURISDICTIONAL AND ACCESS ISSUES IN PART I, AND STRUCTURAL AND PROCEDURAL ISSUES IN PART IV. A BASIC DRAWBACK IN AUSTRALIA'S PROPOSAL WAS THE INCLUSION OF THE RIGHT OF ANY PARTY TO REQUEST ARBITRATION PROCEEDINGS, THUS CIRCUMVENTING MANDATORY ADJUDICATION BY THE SEABEDS DISPUTE CHAMBER. THE NETHERLANDS, SUPPORTED BY THE US, PROPOSED THE DISPUTED BE DIVIDED INTO THREE CATEGORIES: (A) DISPUTES BETWEEN STATES, WHICH WOULD BE SUBJECT TO ARTICLE 9(PART IV) PROCEDURE ALLOWING A CHOICE BETWEEN FOUR PROCEDURES; (B) DISPUTES CONCERNING THE TECHNICAL INTERPRETATION OF CONTRACTS, WHICH WOULD BE SUBJECT TO ARBITRATION AT THE REQUEST OF ANY PARTS; (C) ALL OTHER DISPUTES CONCERNING PART I, WHICH WOULD BE SUBMITTED WITHOUT EXCEPTION TO THE DEEP SEABEDS CHAMBER. THE REMAINING TWO ISSUES WERE: THE ADVISABILITY OF INCREASING THE 2/3 REQUIREMENT FOR ELECTING THE LAW OF THE SEA TRIBUNAL MEMBERS IN ARTICLE 4 OF ANNEX II TO 3/4 OR 4/5; AND A CONTROVERSIAL PROPOSAL TO DIVIDE ACTS OF THE AUTHORITY INTO LEGISLATIVE AND DISCRETIONARY ON THE ONE HAND AND ADMINISTRATIVE ACTS ON THE OTHER, WITH ONLY THE LATTER SUBJECT TO REVIEW BY THE TRIBUNAL.

4. COMMITTEE II

A. DURING THE WEEK, THE COMMITTEE REACHED AN IMPASSE ON THE LEGAL STATUS OF THE ECONOMIC ZONE. IT IS CLEAR THAT UNCLASSIFIED

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WHILE A SIGNIFICANT NUMBER OF NATIONS INCLUDING THE US, FAVOR HIGH SEAS STATUS, THERE IS ALSO OPPOSITION. IT WAS AGREED, HOWEVER, THAT CONSULTATIONS CONTINUE WITH A VIEW TO BREAKING THE DEADLOCK.

B. ON THE QUESTION OF THE DEFINITION OF THE OUTER LIMIT OF THE CONTINENTAL SHELF WHERE IT EXTENDS BEYOND 200 MILES AND THE RELATED QUESTION OF REVENUE SHARING, THERE WAS BROAD AGREEMENT ON THE CONCEPT OF REVENUE SHARING. FROM EXPLOITATION BEYOND 200 MILES. DURING THE FIRST FIVE YEARS OF COMMERCIAL PRODUCTION AT A SITE, THERE WOULD BE NO REVENUE SHARING. IN THE SIXTH YEAR, THE RATE WOULD BE 1PERCENT OF THE VALUE OF PRODUCTION AT THE SITE, INCREASING IN 1PERCENT INCREMENTS ANNUALLY. SOME STATES WANT THE TOP PERCENTAGE TO BE 5PERCENT IN THE TENTH YEAR AND THEREAFTER, WHILE OTHERS STATES FAVOR A TOP RATE OF 7PERCENT IN THE TWELFTH YEAR AND THEREAFTER. WHILE THERE WAS MUCH SUPPORT FOR PAYMENTS TO BE DISTRIBUTED TO DEVELOPING COUNTRIES THROUGH THE INTERNATIONAL SEABED AUTHORITY, THERE WAS ALSO SUPPORT FOR PAYMENTS TO BE DISTRIBUTED THROUGH, FOR EXAMPLE, AN APPROPRIATE ENTITY OF THE UNITED NATIONS. IN ADDITION, WHILE THERE WAS SUPPORT FOR A PROVISION THAT LDCS WITH CONTINENTAL MARGINS BEYOND 200 MILES THAT ARE NOT IMPORTERS OF THE MINERALS EXPLOITED WOULD BE EXEMPT FROM THE REVENUE-SHARING OBLIGATIONS. THERE WAS ALSO SOME SUPPORT FOR THE PROPOSITION THAT ALL COUNTRIES WHICH EXPLOIT BEYOND 200 MILES SHOULD CONTRIBUTE REVENUE, BUT THAT THOSE LDCS WITH MARGINS BEYOND 200 MILES WOULD ALSO BE CONSIDERED AS POTENTIAL RECIPIENTS OF REVENUES.

C. REGARDING THE QUESTION OF DELIMITATION OF THE TERRITORIAL SEA, ECONOMIC ZONE AND CONTINENTAL SHELF BETWEEN ADJACENT OR OPPOSITE STATES, THERE CONTINUED TO BE A DIVISION BETWEEN THOSE STATES WHICH FAVOR AMENDMENTS IMPLYING GREATER PRIMACY FOR EQUITABLE PRINCIPLES, AND THOSE WHICH SUPPORT AMENDMENTS IMPLYING PRIMACY FOR EQUIDISTANCE.

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TANCE. NO PROPOSAL WOULD APPLY EQUIDISTANCE IN ALL CASES, ALTHOUGH SOME WOULD APPLY IT AS AN INTERIM RULE PROVIDING AGREEMENT FOR DISPUTE SETTLEMENT. (IN THIS CONNECTION, THE USSR CONTINUES IN THE INFORMAL PLANNING TO OPPOSE COMPULSORY THIRD-PARTY SETTLEMENT OF DELIMITATION ISSUES.)

5. COMMITTEE III - PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT.

THE INFORMAL WORKING GROUP UNDER CHAIRMAN VALLARTA (MEXICO) HELD ONLY TWO MEETINGS. THE GROUP DISCUSSED ARTICLE 21(5) (SPECIAL AREAS) AND ARTICLE 38 (FLAG STATE PREEMPTION).

A. A PROPOSED COMPROMISE TEXT ON ARTICLE 21(5) MAKES CLEAR THAT ADDITIONAL LAWS RELATING TO DISCHARGES AND NAVIGATIONAL PRACTICES COULD BE APPROVED BY IMCO AT THE SAME TIME AS THE DESIGNATION OF AREAS RELATING TO VESSEL POLLUTION.

IT WAS OPPOSED BY FOUR STATES THAT OBJECTED TO SUBMITTING SPECIAL AREAS TO IMCO FOR APPROVAL.

B. THE DISCUSSION OF ARTICLE 38 CENTERED ON TWO PROPOSED AMENDMENTS INCREASING THE CASES IN WHICH FLAG STATES COULD PREEMPT COASTAL STATE PROCEEDINGS FOR POLLUTION VIOLATION. THE AMENDMENTS WOULD ALLOW PREEMPTION EVEN IN CASES OF MAJOR DAMAGE TO THE COASTAL STATE AND EVEN IF THE FLAG STATE HAD REPEATEDLY DISREGARDED ITS PAST ENFORCEMENT OBLIGATIONS. THESE AMENDMENTS RECEIVED LITTLE SUPPORT AND SUBSTANTIAL OPPOSITION, WITH MOST STATES FAVORING THE ARTICLE AS PRESENTLY WORDED.

6. PART IV - DISPUTE SETTLEMENT

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THE INFORMAL PLENARY ON PART IV CONCLUDED ITS DEBATE ON ARTICLE 17 (OPTIONAL EXCEPTIONS) AND COMMENCED DISCUSSION OF ARTICLE 17 (LIMITATIONS ON JURISDICTION) MOST OF THE GROUP OF 77 OPPOSITION TO COMPULSORY ADJUDICATION FOR DISPUTES ARISING OUT OF ACTIVITIES IN THE ECONOMIC ZONE RELATED TO ARTICLE 17(1) (D) (FISHERIES). CONVERSELY, THERE WAS VERY BROAD SUPPORT FOR COMPULSORY SETTLEMENT IN CASES OF INTERFERENCE WITH NAVIGATION, OVERFLIGHT, AND LAYING OR CABLE AND PIPELINES. FRANCE, SUPPORTED BY THE US, PROPOSED THAT "AFOREMENTIONED FREEDOMS" IN 17 (1)(B) BE AMENDED TO AFOREMENTIONED RIGHTS AND FREEDOMS," AND THE US FURTHER SUPPORTED A CHANGE IN 17(1)(A), TO "FREEDOMS AND RIGHTS OF NAVIGATION AND OVERFLIGHT." THE USSR PROPOSED DELETION OF REFERENCE TO SCIENTIFIC RESEARCH IN 17(1)(B), OFFERING INSTEAD A PROPOSAL DISTINGUISHING BETWEEN QUESTIONS RELATING TO CONSENT AND THOSE RELATING TO THE CONDUCT OF RESEARCH ACTIVITIES, WITH DISPUTE SETTLEMENT APPLICABLE ONLY TO THE LATTER.

LEONARD

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